

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 05-10102-JLT

UNITED STATES OF AMERICA

v.

JOHN BRUENS,
MARY STEWART,
MELISSA VAUGHN and
MARC SIROCKMAN

MEMORANDUM AND ORDER RE:
DEFENDANTS' JOINT MOTION FOR BILL OF PARTICULARS
(DOCKET ENTRY # 34); DEFENDANTS' JOINT MOTION
FOR IMMEDIATE DISCLOSURE OF FED. R. CRIM. P.
404(b) EVIDENCE
(DOCKET ENTRY # 36)

March 8, 2006

BOWLER, U.S.M.J.

After conducting a hearing on March 6, 2006, this court took the motion for a bill of particulars (Docket Entry # 34) and the motion for Rule 404(b), Fed. R. Crim. P. ("Rule 404(b)"), evidence (Docket Entry # 36) under advisement. Taking the motions seriatim, defendants are not entitled to relief.

Addressing the motion for a bill of particulars, such a bill serves to "give the accused details concerning the charges against him, enabling him to prepare a defense; to prevent double jeopardy; and to avoid surprise at trial." United States v. Hallock, 941 F.2d 36, 40 (1st Cir. 1991); accord United States v. Abreu, 952 F.2d 1458, 1469 (1st Cir. 1992) (same). Bills are

therefore required only "if the accused, in the absence of a more detailed specification, will be disabled from preparing a defense, caught by unfair surprise at trial, or hampered in seeking the shelter of the Double Jeopardy Clause." United States v. Sepulveda, 15 F.3d 1161, 1192 (1st Cir. 1993) (further noting that such bills "are seldom employed in modern federal practice").

The Indictment as a whole conveys sufficient information to properly identify the unlawful conduct. See United States v. Hallock, 941 F.2d at 40 (relevant question is whether "'indictment as a whole conveys sufficient information to properly identify' the allegedly unlawful conduct"). For reasons amply and accurately set forth in the government's opposition (Docket Entry # 41), the Indictment meets the foregoing requirements.

Thus, while the bill requested by the defendants may be helpful in preparing a defense, it is not necessary particularly in light of the organizational assistance and optical character guidance given by the government in producing much of the requested discovery. Moreover, the defendants fail to adequately demonstrate that their own investigation based on the evidence available to them would not be sufficient to prepare an adequate defense, see United States v. Belardo-Quinones, 71 F.3d 941, 943-944 (1st Cir. 1995) (upholding denial of bill of particulars while noting that indictment contained enough information for the

defendant to prepare a defense and the record showed no attempts by the defendant to obtain the requested information independently), or to protect them from prejudicial surprise at trial. Finally, the government is not required to provide the defendants with the details of the evidence it intends to introduce or the purposes for which it intends to introduce the evidence. United States v. Finley, 705 F. Supp. 1272, 1278 (N.D. Ill. 1988).

Turning to the Rule 404(b) motion, the defendants are not entitled to production at this point in time. There is no trial date at this time and the filing of any dispositive motions is not imminent. Moreover, under the local rules, the district judge customarily orders the government to produce Rule 404(b) evidence no later than 21 days before the trial date at the initial pretrial conference. See LR. 117.1(A)(4)(b).

The government also represents that it "has not yet decided what, if any, 'bad acts' evidence it will seek to admit in its case in chief." (Docket Entry # 42). Thus, the government does not presently intend to offer any specific bad acts evidence at the time of the defendants' present request. See United States v. Tuesta-Toro, 29 F.3d 771, 775 n. 1 (1st Cir. 1994) (noting "that Rule 404(b) seemingly requires pretrial notification only of 'other wrongful acts' evidence which the government presently intends, *as of the time the government responds to the request,*

to introduce at trial"). Finally, even though the request is premature, the government nonetheless agrees to provide the defendants with any Rule 404(b) evidence 30 days prior to the trial date.

CONCLUSION

In accordance with the foregoing discussion, the motion for a bill of particulars (Docket Entry # 34) is **DENIED** and the motion for Rule 404(b) evidence (Docket Entry # 36) is **DENIED** without prejudice at this time.

/s/ Marianne B. Bowler

MARIANNE B. BOWLER

United States Magistrate Judge